

**Petitioners:** ACD Telecom, DayStarr,  
Clear Rate Communications,  
TC3 Telecom, and TelNet Worldwide  
**State Entity:** State of Michigan  
**Date:** February 9, 2010

*Pletz v. Secretary of State*, 125 Mich. App. 335, 375; 336 N.W.2d 789 (1983) (footnotes omitted).

The Michigan Legislature would not have passed Act 182 without the inclusion of the restructuring mechanism. Michigan House Bill No. 4257 as introduced on February 11, 2009 did not include the restructuring mechanism, but instead only included the requirement that rates for intra-state access services be the same as the interstate rates. *See* Exhibit 9. However, the version of the bill that passed the House on December 3, 2009 *did* include the restructuring mechanism subsidy that found its way into Act 182. Clearly the Michigan Legislature believed that the smaller ILECs must be subsidized to make up for their reduced intrastate access rates. Such intent is apparent by the plain language of Act 182, which states:

An eligible provider is entitled to receive monthly disbursements from the restructuring mechanism as provided in subsection (11) *in order to recover the lost intrastate switched toll access service revenues resulting from rate reductions under subsection (2).*

MCL § 484.2310(8) (emphasis supplied). Thus, it is apparent that the Michigan Legislature considered the inclusion of the provision that permitted the smaller ILECs to “recover the lost intrastate toll access service revenues” as vital to Act 182, and the Michigan Legislature would not have passed Act 182 without such provision.

Accordingly, Act 182 must be preempted in its entirety. The “restructuring mechanism” which provides a subsidy to the smaller ILECs violates §§ 253 and 254 of the Federal Act, and as such must be determined invalid. Because the legislative history and the plain language of Act 182 itself reveal that the Michigan Legislature would not have passed Act 182 absent the “restructuring mechanism,” the FCC should declare that the entirety of Act 182 is preempted.

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**D. Good Cause Exists for the Commission to Expedite Its Decision in this Proceeding.**

In its *Suggested Guidelines for Petitions for Ruling Under Section 253 of the Communications Act*, 13 FCC Rcd. 22970, FCC 98-295, § C (rel'd Nov. 17, 1998), the Commission recognized that the Commission might be required to expedite its consideration of certain petitions filed under § 253 of the Federal Act:

We anticipate the affected government entity and interested third parties generally will have approximately 30 days to respond to the petition. If the matter presented in the petition *is of an urgent nature*, the Bureau may, where it determines good cause exists, require less than 30 days for responses. . . . The specific due date for replies will be set forth in the Initial Public Notice; the time period for replies may be less than 15 days if the relevant Bureau has determined *that expedited review is appropriate*. (Emphasis supplied.)

Good cause exists for the Commission to expedite its consideration of the instant Petition. As stated, the MPSC has already begun its implementation of Act 182. The Petitioners are required to file substantial information on February 16, 2010. The MPSC has stated the additional orders that are forthcoming to implement Act 182.

At the legislatively-mandated times, the [MPSC] intends to issue further orders for each of the following items: informing each eligible provider of the amount it is entitled to receive (no later than April 16, 2010); informing all providers of the contribution percentage (no later than May 17, 2010); and notifying providers of the official start-date and the mechanics of paying into and receiving money from the restructuring mechanism (no later than August 16, 2010).

MPSC Order at 5. In addition, the Petitioners will begin paying into the “restructuring mechanism” no later than September 13, 2010, MCL § 484.2310(9), and the Petitioners will need to begin the re-

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duction of their intrastate access rates on January 1, 2011, including the filing of revised tariffs, MCL § 484.2310(2).

If Act 182 is permitted to operate absent the Commission acting in an expedited manner, the public will be harmed because, for the reasons discussed above, competition will not be able to exist in the smaller ILEC territories. The Commission should be aware of and give great weight to the fact that the rates for almost all local exchange services are not regulated or reviewed under Michigan telecommunications law.<sup>5</sup> The combination of unregulated rates and the absence of competition within the smaller ILEC territories means that very few economic restraints will exist to keep the smaller ILECs' service rates in check. Thus, expedited Commission action is needed to restore the prospect of competition in the smaller ILEC territories to provide a moderating factor and a choice of rates available to the public.

Furthermore, Petitioners will be harmed in that they will be required to make significant, unrecoverable expenditures to comply with Act 182's reporting and tariffing requirements, and will also be required to pay into the fund. Also, the Petitioners, and competition in general, will be harmed if the Petitioners and other smaller CLECs are required to reduce their intrastate access rates without receiving the same replacement revenues available to the smaller ILECs. As discussed, the

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<sup>5</sup> While general local exchange rates are unregulated, "primary basic local exchange service" is rate-regulated. *See* MCL § 484.2304. However, "primary basic local exchange service" is a very limited service offering to which few customers subscribe. "Primary basic local exchange service" is "the provision of 1 primary access line to a residential customer for voice communication." This service is capped at a maximum of 100 outgoing calls per month. MCL § 484.2102(y).

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Petitioners will be placed at a severe competitive disadvantage, and the FCC should act in an expedited manner to avoid this harm to the Petitioners.

**E. Other Pending Court or State Regulatory Actions Relating to the Enforceability of Act 182.**

There are no other pending court or state regulatory actions relating to the enforceability of Act 182.

**III. Service on Government Entity to Which the Petition Applies**

The FCC's *Suggested Guidelines for Petitions for Ruling Under Section 253 of the Communications Act*, 13 FCC Rcd. 22970, FCC 98-295, § D (rel'd Nov. 17, 1998) state that "the petitioner should simultaneously provide a copy of the petition to each state or local government entity to which the petition applies and reference such service in the petition." The Petitioners have attached a proof of service to this Petition indicating service of the Petition on both the State of Michigan Attorney General and the Michigan Public Service Commission.

**IV. Conclusion.**

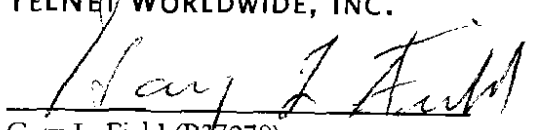
For all of the reasons stated above, Petitioners request that the Commission, on an expedited basis, preempt in its entirety Michigan's statute 2009 PA 182.

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Respectfully submitted,

ACD TELECOM, INC.; DAYSTARR,  
LLC; CLEAR RATE COMMUNICATIONS,  
INC.; TC3 TELECOM, INC.; AND  
TELNET WORLDWIDE, INC.

Dated: February 9, 2010

  
\_\_\_\_\_  
Gary L. Field (P37270)  
Gary A. Gensch, Jr. (P66912)  
FIELD LAW GROUP, PLLC  
915 N. Washington Ave.  
Lansing, Michigan 48906  
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**State Entity:** State of Michigan  
**Date:** February 9, 2010

### Exhibit List

1. 2009 PA 182 ("Act 182")
2. Act 182 as passed by the Michigan State Senate showing the revisions that Act 182 made to § 310 of the MTA
3. *In re the Commission's own motion, to implement 2009 PA 182, MCL 484.2310*, Case No. U-16183 (Jan. 11, 2010 Order) (the "MPSC Order")
4. Declaration of Mark Iannuzzi
5. Declaration of Joseph Mattausch
6. Declaration of Thane Namy
7. Declaration of Kevin Schoen
8. Declaration of Collin Rose
9. Michigan House Bill No. 4257 as introduced on February 11, 2009

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of

**ACD Telecom, Inc.; DayStarr, LLC; Clear  
Rate Communications, Inc.; TC3 Telecom,  
Inc.; and TelNet Worldwide, Inc.**

Docket No. \_\_\_\_\_

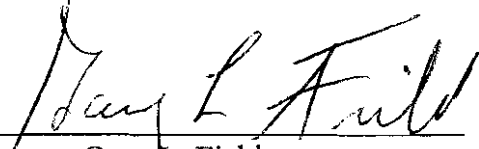
Joint Petition for Expedited Declaratory Rul-  
ing that the State of Michigan's Statute 2009  
PA 182 is Preempted Under Sections 253 and  
254 of the Communications Act

**Proof of Service**

Gary L. Field, employed at Field Law Group, PLLC, being duly sworn, affirms that on the 9th day of February, 2010, he caused to be served a copy of ACD Telecom, Inc., DayStarr, LLC, Clear Rate Communications, Inc., TC3 Telecom, Inc., and TelNet Worldwide, Inc.'s *Joint Petition for Expedited Ruling that the State of Michigan's Statute 2009 PA 182 is Preempted Under Sections 253 and 254 of the Communications Act* upon the parties listed below at their respective street addresses by regular first class mail, postage prepaid:

Mike Cox  
Michigan Attorney General  
G. Mennen Williams Building, 7<sup>th</sup> Floor  
525 W. Ottawa St.  
P.O. Box 30212  
Lansing, MI 48909

Steve Hughey  
Assistant Attorney General  
Public Service Division  
6545 Mercantile Way, Suite 15  
Lansing, MI 48911

  
\_\_\_\_\_  
Gary L. Field

Subscribed and sworn before me on February 9, 2010



Tina A. Barlow

Ingham County, Michigan

My Commission Expires September 9, 2014



# Exhibit 1

Act No. 182  
Public Acts of 2009  
Approved by the Governor  
December 17, 2009  
Filed with the Secretary of State  
December 17, 2009  
EFFECTIVE DATE: December 17, 2009

**STATE OF MICHIGAN  
95TH LEGISLATURE  
REGULAR SESSION OF 2009**

Introduced by Rep. Melton

# **ENROLLED HOUSE BILL No. 4257**

AN ACT to amend 1991 PA 179, entitled "An act to regulate and insure the availability of certain telecommunication services; to prescribe the powers and duties of certain state agencies and officials; to prescribe penalties; and to repeal acts and parts of acts," by amending section 310 (MCL 484.2310), as amended by 2005 PA 235.

*The People of the State of Michigan enact:*

Sec. 310. (1) Except as provided by this section, the commission shall not review or set the rates for toll access services.

(2) A provider of toll access services shall set the rates for intrastate switched toll access services at rates that do not exceed the rates allowed for the same interstate services by the federal government and shall use the access rate elements for intrastate switched toll access services that are in effect for that provider and are allowed for the same interstate services by the federal government. Eligible providers shall comply with this subsection as of the date established for the commencement of the operation of the restructuring mechanism under subsection (9). Providers other than eligible providers shall not charge intrastate toll access service rates in excess of those rates in effect as of July 1, 2009 and shall reduce the differential, if any, between intrastate and interstate switched toll access service rates in effect as of July 1, 2009 in no more than 5 steps of at least 20% each of the differential on the following dates: January 1, 2011; January 1, 2012; January 1, 2013; January 1, 2014; and January 1, 2015. Providers may agree to a rate that is less than the rate allowed by the federal government.

(3) Two or more providers that each have less than 250,000 access lines may agree to joint toll access service rates and pooling of intrastate toll access service revenues.

(4) A provider of toll access services shall make available for intrastate access services any technical interconnection arrangements, including colocation required by the federal government for the identical interstate access services.

(5) A provider of toll access service, whether under tariff or contract, shall offer the services under the same rates, terms, and conditions, without unreasonable discrimination, to all providers. All pricing of special toll access services and switched access services, including volume discounts, shall be offered to all providers under the same rates, terms, and conditions.

(6) If a toll access service rate is reduced, then the provider receiving the reduced rate shall reduce its rate to its customers by an equal amount. The commission may investigate and ensure that the provider has complied with this subsection.

(7) In order to restructure intrastate switched toll access service rates, there is hereby established in the department of energy, labor, and economic growth an intrastate switched toll access rate restructuring mechanism as a separate interest-bearing fund. The state treasurer shall direct the investment of the restructuring mechanism. Money in the restructuring mechanism shall remain in the restructuring mechanism at the close of the fiscal year and shall not revert to the general fund.

(8) An eligible provider is entitled to receive monthly disbursements from the restructuring mechanism as provided in subsection (11) in order to recover the lost intrastate switched toll access service revenues resulting from rate reductions under subsection (2).

(9) The restructuring mechanism shall be administered by the commission. The restructuring mechanism shall be established and shall begin operation within 270 days after the effective date of the amendatory act that added this subsection. Subject to the preceding sentence, the commission shall establish the date for commencing the operation of the restructuring mechanism and shall notify the participants in the restructuring mechanism at least 30 days in advance of that date. The commission shall recover its actual costs of administering the restructuring mechanism from assessments collected for the operation of the restructuring mechanism.

(10) The commission shall establish the procedures and timelines for organizing, funding, and administering the restructuring mechanism. The commission shall report to the legislature and the governor annually regarding the administration of the restructuring mechanism. The report shall include the total amount of money collected from contributing providers, the total amount of money disbursed from the restructuring mechanism annually to each eligible provider, the costs of administration, and any other information considered relevant by the commission. Any company-specific information pertaining to access lines, switched toll access services minutes of use, switched toll access demand quantities, contributions, and intrastate telecommunications services revenues submitted to the commission under this subsection are confidential commercial or financial information and exempt from public disclosure pursuant to section 210.

(11) The initial size of the restructuring mechanism shall be calculated as follows:

(a) Within 60 days of the effective date of the amendatory act that added this subsection each eligible provider shall submit to the commission information and all the supporting documentation that establishes the amount of the reduction in annual intrastate switched toll access revenues which will result from the reduction in rates required in subsection (2). The reduction shall be calculated for each eligible provider as the difference between intrastate and interstate switched toll access service rates in effect as of July 1, 2009, multiplied by the intrastate switched access minutes of use and other switched access demand quantities for the calendar year 2008.

(b) The commission shall compute the size of the initial restructuring mechanism disbursements for each eligible provider and shall inform each eligible provider of that computation within 60 days after receiving the information and supporting documentation from the eligible providers under subdivision (a).

(12) The restructuring mechanism shall be created and supported by a mandatory monthly contribution by all providers of retail intrastate telecommunications services and all providers of commercial mobile service. Interconnected voice over internet protocol services shall not be considered an intrastate telecommunications service for the purposes of this section and interconnected voice over internet protocol service providers shall not be required to pay, directly or indirectly, the mandatory monthly contributions established in this subsection. A provider of telecommunications services to a provider of interconnected voice over internet protocol services shall not pay a mandatory monthly contribution related to those interconnected voice over internet protocol services or attempt to pass through any mandatory monthly contributions, directly or indirectly, to a provider of interconnected voice over internet protocol services. Nothing in this act grants the commission authority over commercial mobile service providers or voice over internet protocol service providers except as is strictly necessary for administration of the restructuring mechanism.

(13) Within 60 days of the effective date of the amendatory act that added this subsection, each contributing provider shall report its 2008 intrastate retail telecommunications services revenues to the commission. Notwithstanding anything in subsection (12), if the federal communications commission determines that interconnected voice over internet protocol services may be subject to state regulation for universal services purposes, the commission may open a proceeding to determine who is required to participate in a universal service fund.

(14) The initial contribution assessment percentage shall be a uniform percentage of retail intrastate telecommunications services revenues determined by projecting the total amount necessary to cover the initial intrastate switched toll access rate restructuring mechanism disbursement levels for 12 months, including projected cash reserve requirements, actual and projected administrative costs, and projected uncollectible contribution assessments, divided by the 2008 calendar year total retail intrastate telecommunications services revenues in this state, less projected uncollectible revenues, reported to the commission. The commission shall issue an order establishing the initial calculation of the contribution assessment percentage within 150 days of the effective date of the amendatory act that added this subsection. The commission may increase or decrease the contribution assessment on a quarterly or other basis as necessary to maintain sufficient funds for disbursements.

(15) Each contributing provider shall remit to the commission on a monthly basis an amount equal to its intrastate retail telecommunications services revenues, less uncollectible revenues, multiplied by the contribution assessment percentage determined under subsection (14), according to a time frame established by the commission. These contributions shall continue until the end of the period for which eligible providers are entitled to receive monthly disbursements from the restructuring mechanism under subsections (11) and (16).

(16) The commission shall recalculate the size of the restructuring mechanism for each eligible provider 4 years from the date the initial restructuring mechanism becomes operational pursuant to subsection (9) and again 4 years thereafter. The recalculation process shall be as follows:

(a) The restructuring mechanism shall be recalculated each time as the difference between the intrastate switched toll access rates in effect as of July 1, 2009 and the interstate switched toll access rates in effect at the time of the recalculation, multiplied by the intrastate switched toll access minutes of use and other switched access demand quantities for the calendar year 2008.

(b) The recalculated restructuring mechanism shall be further adjusted during the first recalculation by the percentage change, if any, in the number of access lines in service for each eligible provider from December 31, 2008 to December 31 of the year immediately preceding the year in which the adjustment is made.

(c) The recalculated restructuring mechanism shall be adjusted during the second recalculation by the percentage change, if any, in the number of access lines in service for each eligible provider from December 31 of the year of the first recalculation to December 31 of the year immediately preceding the second recalculation.

(d) Each eligible provider is entitled to receive monthly disbursements from the restructuring mechanism for a period of no more than 12 years from the date the restructuring mechanism is established under subsection (9), at which time the restructuring mechanism shall cease to exist.

(17) The money received and administered by the commission for the support and operation of the restructuring mechanism created by the amendatory act that created this subsection shall not be used by the commission or any department, agency, or branch of the government of this state for any other purpose, and that money is not subject to appropriation, allocation, assignment, expenditure, or other use by any department, agency, or branch of the government of this state.

(18) If the federal government adopts intercarrier compensation reforms or takes any action that causes or requires a significant change in interstate switched toll access service rates, the commission may initiate, or any interested party may file an application for, a proceeding pursuant to section 203 within 60 days of that action to determine whether any modifications to the size, operation, or composition of the restructuring mechanism are warranted. During the pendency of that proceeding, the requirement in subsection (2) for eligible providers to set intrastate switched toll access service rates equal to interstate switched toll access service shall be temporarily suspended by those providers. Intrastate access rates may not be increased above the levels that exist at the time of the suspension. Following notice and hearing, upon a showing of good cause, the commission may stop or place certain conditions on the temporary suspension.

(19) If the federal government changes the federal universal service contribution methodology so that it is not based on a percentage of total interstate telecommunications services revenues, the commission shall modify the contribution methodology for the restructuring mechanism to be consistent with the federal methodology. The commission shall initiate a proceeding to modify the contribution methodology for the restructuring mechanism and to establish a reasonable time period for transition to the new contribution methodology.

(20) Disputes arising under this section may be submitted to the commission for resolution pursuant to sections 203 and 204.

(21) If any contributing provider subject to this section fails to make the required contributions or fails to provide required information to the commission, the commission shall initiate an enforcement proceeding under section 203. If the commission finds that a contributing provider has failed to make contributions or to perform any act required under this section, a contributing provider shall be subject to the remedies and penalties under section 601.

(22) Eligible providers and contributing providers shall provide information to the commission that is required for the administration of the restructuring mechanism. Company-specific information pertaining to access lines, switched toll access services minutes of use, switched toll access demand quantities, contributions, and intrastate telecommunications services revenues submitted to the commission under this subsection is confidential commercial or financial information and exempt from public disclosure pursuant to section 210.

(23) As used in this section:

(a) "Commercial mobile service" means that term as defined in section 332(d)(1) of the telecommunications act of 1996, 47 USC 332.

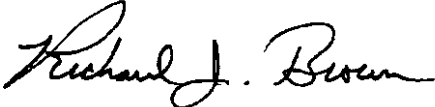
(b) "Contributing provider" means an entity required to pay into the restructuring mechanism.

(c) "Eligible provider" means an incumbent local exchange carrier as defined in section 251 of the telecommunications act of 1996, 47 USC 251, that as of January 1, 2009 had rates for intrastate switched toll access services higher than its rates for the same interstate switched toll access services, and that provides the services and functionalities identified by rules of the federal communications commission described at 47 CFR 54.101(a).

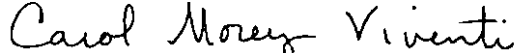
(d) "Interconnected voice over internet protocol service" means that term as defined in 47 CFR 9.3.

(e) "Restructuring mechanism" means the intrastate switched toll access rate restructuring mechanism established in this section.

This act is ordered to take immediate effect.



.....  
Clerk of the House of Representatives



.....  
Secretary of the Senate

Approved .....

.....  
Governor

# Exhibit 2

SUBSTITUTE FOR  
HOUSE BILL NO. 4257

A bill to amend 1991 PA 179, entitled  
"Michigan telecommunications act,"  
by amending section 310 (MCL 484.2310), as amended by 2005 PA 235.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 310. (1) Except as provided by this section, the  
2       commission shall not review or set the rates for toll access  
3       services.

4       (2) A provider of toll access services shall set the rates for  
5       **INTRASTATE SWITCHED** toll access services ~~Access service AT~~ rates  
6       ~~and charges set by a provider~~ that do not exceed the rates allowed  
7       for the same interstate services by the federal government ~~are just~~  
8       ~~and reasonable~~ **AND SHALL USE THE ACCESS RATE ELEMENTS FOR**  
9       **INTRASTATE SWITCHED TOLL ACCESS SERVICES THAT ARE IN EFFECT FOR**  
10      **THAT PROVIDER AND ARE ALLOWED FOR THE SAME INTERSTATE SERVICES BY**

1 THE FEDERAL GOVERNMENT. ELIGIBLE PROVIDERS SHALL COMPLY WITH THIS  
2 SUBSECTION AS OF THE DATE ESTABLISHED FOR THE COMMENCEMENT OF THE  
3 OPERATION OF THE RESTRUCTURING MECHANISM UNDER SUBSECTION (9).  
4 PROVIDERS OTHER THAN ELIGIBLE PROVIDERS SHALL NOT CHARGE INTRASTATE  
5 TOLL ACCESS SERVICE RATES IN EXCESS OF THOSE RATES IN EFFECT AS OF  
6 JULY 1, 2009 AND SHALL REDUCE THE DIFFERENTIAL, IF ANY, BETWEEN  
7 INTRASTATE AND INTERSTATE SWITCHED TOLL ACCESS SERVICE RATES IN  
8 EFFECT AS OF JULY 1, 2009 IN NO MORE THAN 5 STEPS OF AT LEAST 20%  
9 EACH OF THE DIFFERENTIAL ON THE FOLLOWING DATES: JANUARY 1, 2011;  
10 JANUARY 1, 2012; JANUARY 1, 2013; JANUARY 1, 2014; AND JANUARY 1,  
11 2015. Providers may agree to a rate that is less than the rate  
12 allowed by the federal government.

13 (3) Two or more providers that each have less than 250,000  
14 access lines may agree to joint toll access service rates and  
15 pooling of intrastate toll access service revenues.

16 (4) A provider of toll access services shall make available  
17 for intrastate access services any technical interconnection  
18 arrangements, including colocation required by the federal  
19 government for the identical interstate access services.

20 (5) A provider of toll access service, whether under tariff or  
21 contract, shall offer the services under the same rates, terms, and  
22 conditions, without unreasonable discrimination, to all providers.  
23 All pricing of special toll access services and switched access  
24 services, including volume discounts, shall be offered to all  
25 providers under the same rates, terms, and conditions.

26 (6) If a toll access service rate is reduced, then the  
27 provider receiving the reduced rate shall reduce its rate to its



1 customers by an equal amount. The commission shall ~~shall~~ **MAY** investigate  
2 and ensure that the provider has complied with this subsection.

3 ~~—— (7) This section shall not apply to basic local exchange~~  
4 ~~providers that have 250,000 or fewer customers in this state.~~

5 (7) IN ORDER TO RESTRUCTURE INTRASTATE SWITCHED TOLL ACCESS  
6 SERVICE RATES, THERE IS HEREBY ESTABLISHED IN THE DEPARTMENT OF  
7 ENERGY, LABOR, AND ECONOMIC GROWTH AN INTRASTATE SWITCHED TOLL  
8 ACCESS RATE RESTRUCTURING MECHANISM AS A SEPARATE INTEREST-BEARING  
9 FUND. THE STATE TREASURER SHALL DIRECT THE INVESTMENT OF THE  
10 RESTRUCTURING MECHANISM. MONEY IN THE RESTRUCTURING MECHANISM SHALL  
11 REMAIN IN THE RESTRUCTURING MECHANISM AT THE CLOSE OF THE FISCAL  
12 YEAR AND SHALL NOT REVERT TO THE GENERAL FUND.

13 (8) AN ELIGIBLE PROVIDER IS ENTITLED TO RECEIVE MONTHLY  
14 DISBURSEMENTS FROM THE RESTRUCTURING MECHANISM AS PROVIDED IN  
15 SUBSECTION (11) IN ORDER TO RECOVER THE LOST INTRASTATE SWITCHED  
16 TOLL ACCESS SERVICE REVENUES RESULTING FROM RATE REDUCTIONS UNDER  
17 SUBSECTION (2).

18 (9) THE RESTRUCTURING MECHANISM SHALL BE ADMINISTERED BY THE  
19 COMMISSION. THE RESTRUCTURING MECHANISM SHALL BE ESTABLISHED AND  
20 SHALL BEGIN OPERATION WITHIN 270 DAYS AFTER THE EFFECTIVE DATE OF  
21 THE AMENDATORY ACT THAT ADDED THIS SUBSECTION. SUBJECT TO THE  
22 PRECEDING SENTENCE, THE COMMISSION SHALL ESTABLISH THE DATE FOR  
23 COMMENCING THE OPERATION OF THE RESTRUCTURING MECHANISM AND SHALL  
24 NOTIFY THE PARTICIPANTS IN THE RESTRUCTURING MECHANISM AT LEAST 30  
25 DAYS IN ADVANCE OF THAT DATE. THE COMMISSION SHALL RECOVER ITS  
26 ACTUAL COSTS OF ADMINISTERING THE RESTRUCTURING MECHANISM FROM  
27 ASSESSMENTS COLLECTED FOR THE OPERATION OF THE RESTRUCTURING

1 MECHANISM.

2 (10) THE COMMISSION SHALL ESTABLISH THE PROCEDURES AND  
3 TIMELINES FOR ORGANIZING, FUNDING, AND ADMINISTERING THE  
4 RESTRUCTURING MECHANISM. THE COMMISSION SHALL REPORT TO THE  
5 LEGISLATURE AND THE GOVERNOR ANNUALLY REGARDING THE ADMINISTRATION  
6 OF THE RESTRUCTURING MECHANISM. THE REPORT SHALL INCLUDE THE TOTAL  
7 AMOUNT OF MONEY COLLECTED FROM CONTRIBUTING PROVIDERS, THE TOTAL  
8 AMOUNT OF MONEY DISBURSED FROM THE RESTRUCTURING MECHANISM ANNUALLY  
9 TO EACH ELIGIBLE PROVIDER, THE COSTS OF ADMINISTRATION, AND ANY  
10 OTHER INFORMATION CONSIDERED RELEVANT BY THE COMMISSION. ANY  
11 COMPANY-SPECIFIC INFORMATION PERTAINING TO ACCESS LINES, SWITCHED  
12 TOLL ACCESS SERVICES MINUTES OF USE, SWITCHED TOLL ACCESS DEMAND  
13 QUANTITIES, CONTRIBUTIONS, AND INTRASTATE TELECOMMUNICATIONS  
14 SERVICES REVENUES SUBMITTED TO THE COMMISSION UNDER THIS SUBSECTION  
15 ARE CONFIDENTIAL COMMERCIAL OR FINANCIAL INFORMATION AND EXEMPT  
16 FROM PUBLIC DISCLOSURE PURSUANT TO SECTION 210.

17 (11) THE INITIAL SIZE OF THE RESTRUCTURING MECHANISM SHALL BE  
18 CALCULATED AS FOLLOWS:

19 (A) WITHIN 60 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT  
20 THAT ADDED THIS SUBSECTION EACH ELIGIBLE PROVIDER SHALL SUBMIT TO  
21 THE COMMISSION INFORMATION AND ALL THE SUPPORTING DOCUMENTATION  
22 THAT ESTABLISHES THE AMOUNT OF THE REDUCTION IN ANNUAL INTRASTATE  
23 SWITCHED TOLL ACCESS REVENUES WHICH WILL RESULT FROM THE REDUCTION  
24 IN RATES REQUIRED IN SUBSECTION (2). THE REDUCTION SHALL BE  
25 CALCULATED FOR EACH ELIGIBLE PROVIDER AS THE DIFFERENCE BETWEEN  
26 INTRASTATE AND INTERSTATE SWITCHED TOLL ACCESS SERVICE RATES IN  
27 EFFECT AS OF JULY 1, 2009, MULTIPLIED BY THE INTRASTATE SWITCHED

House Bill No. 4257 (H-6) as amended December 3, 2009

1 ACCESS MINUTES OF USE AND OTHER SWITCHED ACCESS DEMAND QUANTITIES  
2 FOR THE CALENDAR YEAR 2008.

3 (B) THE COMMISSION SHALL COMPUTE THE SIZE OF THE INITIAL  
4 RESTRUCTURING MECHANISM DISBURSEMENTS FOR EACH ELIGIBLE PROVIDER  
5 AND SHALL INFORM EACH ELIGIBLE PROVIDER OF THAT COMPUTATION WITHIN  
6 60 DAYS AFTER RECEIVING THE INFORMATION AND SUPPORTING  
7 DOCUMENTATION FROM THE ELIGIBLE PROVIDERS UNDER SUBDIVISION (A).

8 (12) THE RESTRUCTURING MECHANISM SHALL BE CREATED AND  
9 SUPPORTED BY A MANDATORY MONTHLY CONTRIBUTION BY ALL PROVIDERS OF  
10 RETAIL INTRASTATE TELECOMMUNICATIONS SERVICES AND ALL PROVIDERS OF  
11 COMMERCIAL MOBILE SERVICE. INTERCONNECTED VOICE OVER INTERNET  
12 PROTOCOL SERVICES SHALL NOT BE CONSIDERED AN INTRASTATE  
13 TELECOMMUNICATIONS SERVICE FOR THE PURPOSES OF THIS SECTION AND  
14 INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICE PROVIDERS SHALL  
15 NOT BE REQUIRED TO PAY, DIRECTLY OR INDIRECTLY, THE MANDATORY  
16 MONTHLY CONTRIBUTIONS ESTABLISHED IN THIS SUBSECTION. A PROVIDER OF  
17 TELECOMMUNICATIONS SERVICES [TO A PROVIDER OF INTERCONNECTED VOICE OVER  
INTERNET PROTOCOL SERVICES SHALL NOT PAY A MANDATORY MONTHLY  
CONTRIBUTION RELATED TO THOSE INTERCONNECTED VOICE OVER INTERNET PROTOCOL  
SERVICES] OR ATTEMPT TO PASS  
18 THROUGH ANY MANDATORY MONTHLY CONTRIBUTIONS, DIRECTLY OR  
19 INDIRECTLY, TO A PROVIDER OF INTERCONNECTED VOICE OVER INTERNET  
20 PROTOCOL SERVICES. NOTHING IN THIS ACT GRANTS THE COMMISSION  
21 AUTHORITY OVER COMMERCIAL MOBILE SERVICE PROVIDERS OR VOICE OVER  
22 INTERNET PROTOCOL SERVICE PROVIDERS EXCEPT AS IS STRICTLY NECESSARY  
23 FOR ADMINISTRATION OF THE RESTRUCTURING MECHANISM.

24 (13) WITHIN 60 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY  
25 ACT THAT ADDED THIS SUBSECTION, EACH CONTRIBUTING PROVIDER SHALL  
26 REPORT ITS 2008 INTRASTATE RETAIL TELECOMMUNICATIONS SERVICES  
27 REVENUES TO THE COMMISSION. [NOTWITHSTANDING ANYTHING IN SUBSECTION (12),

House Bill No. 4257 (H-6) as amended December 3, 2009

1 IF THE FEDERAL COMMUNICATIONS COMMISSION DETERMINES THAT INTERCONNECTED  
2 VOICE OVER INTERNET PROTOCOL SERVICES MAY BE SUBJECT TO STATE REGULATION  
3 FOR UNIVERSAL SERVICES PURPOSES, THE COMMISSION MAY OPEN A PROCEEDING TO  
4 DETERMINE WHO IS REQUIRED TO PARTICIPATE IN A UNIVERSAL SERVICE FUND.  
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11 ]

12 (14) THE INITIAL CONTRIBUTION ASSESSMENT PERCENTAGE SHALL BE A  
13 UNIFORM PERCENTAGE OF RETAIL INTRASTATE TELECOMMUNICATIONS SERVICES  
14 REVENUES DETERMINED BY PROJECTING THE TOTAL AMOUNT NECESSARY TO  
15 COVER THE INITIAL INTRASTATE SWITCHED TOLL ACCESS RATE  
16 RESTRUCTURING MECHANISM DISBURSEMENT LEVELS FOR 12 MONTHS,  
17 INCLUDING PROJECTED CASH RESERVE REQUIREMENTS, ACTUAL AND PROJECTED  
18 ADMINISTRATIVE COSTS, AND PROJECTED UNCOLLECTIBLE CONTRIBUTION  
19 ASSESSMENTS, DIVIDED BY THE 2008 CALENDAR YEAR TOTAL RETAIL  
20 INTRASTATE TELECOMMUNICATIONS SERVICES REVENUES IN THIS STATE, LESS  
21 PROJECTED UNCOLLECTIBLE REVENUES, REPORTED TO THE COMMISSION. THE  
22 COMMISSION SHALL ISSUE AN ORDER ESTABLISHING THE INITIAL  
23 CALCULATION OF THE CONTRIBUTION ASSESSMENT PERCENTAGE WITHIN 150  
24 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS  
25 SUBSECTION. THE COMMISSION MAY INCREASE OR DECREASE THE  
26 CONTRIBUTION ASSESSMENT ON A QUARTERLY OR OTHER BASIS AS NECESSARY  
27 TO MAINTAIN SUFFICIENT FUNDS FOR DISBURSEMENTS.

1           (15) EACH CONTRIBUTING PROVIDER SHALL REMIT TO THE COMMISSION  
2 ON A MONTHLY BASIS AN AMOUNT EQUAL TO ITS INTRASTATE RETAIL  
3 TELECOMMUNICATIONS SERVICES REVENUES, LESS UNCOLLECTIBLE REVENUES,  
4 MULTIPLIED BY THE CONTRIBUTION ASSESSMENT PERCENTAGE DETERMINED  
5 UNDER SUBSECTION (14), ACCORDING TO A TIME FRAME ESTABLISHED BY THE  
6 COMMISSION. THESE CONTRIBUTIONS SHALL CONTINUE UNTIL THE END OF THE  
7 PERIOD FOR WHICH ELIGIBLE PROVIDERS ARE ENTITLED TO RECEIVE MONTHLY  
8 DISBURSEMENTS FROM THE RESTRUCTURING MECHANISM UNDER SUBSECTIONS  
9 (11) AND (16).

10           (16) THE COMMISSION SHALL RECALCULATE THE SIZE OF THE  
11 RESTRUCTURING MECHANISM FOR EACH ELIGIBLE PROVIDER 4 YEARS FROM THE  
12 DATE THE INITIAL RESTRUCTURING MECHANISM BECOMES OPERATIONAL  
13 PURSUANT TO SUBSECTION (9) AND AGAIN 4 YEARS THEREAFTER. THE  
14 RECALCULATION PROCESS SHALL BE AS FOLLOWS:

15           (A) THE RESTRUCTURING MECHANISM SHALL BE RECALCULATED EACH  
16 TIME AS THE DIFFERENCE BETWEEN THE INTRASTATE SWITCHED TOLL ACCESS  
17 RATES IN EFFECT AS OF JULY 1, 2009 AND THE INTERSTATE SWITCHED TOLL  
18 ACCESS RATES IN EFFECT AT THE TIME OF THE RECALCULATION, MULTIPLIED  
19 BY THE INTRASTATE SWITCHED TOLL ACCESS MINUTES OF USE AND OTHER  
20 SWITCHED ACCESS DEMAND QUANTITIES FOR THE CALENDAR YEAR 2008.

21           (B) THE RECALCULATED RESTRUCTURING MECHANISM SHALL BE FURTHER  
22 ADJUSTED DURING THE FIRST RECALCULATION BY THE PERCENTAGE CHANGE,  
23 IF ANY, IN THE NUMBER OF ACCESS LINES IN SERVICE FOR EACH ELIGIBLE  
24 PROVIDER FROM DECEMBER 31, 2008 TO DECEMBER 31 OF THE YEAR  
25 IMMEDIATELY PRECEDING THE YEAR IN WHICH THE ADJUSTMENT IS MADE.

26           (C) THE RECALCULATED RESTRUCTURING MECHANISM SHALL BE ADJUSTED  
27 DURING THE SECOND RECALCULATION BY THE PERCENTAGE CHANGE, IF ANY,

1 IN THE NUMBER OF ACCESS LINES IN SERVICE FOR EACH ELIGIBLE PROVIDER  
2 FROM DECEMBER 31 OF THE YEAR OF THE FIRST RECALCULATION TO DECEMBER  
3 31 OF THE YEAR IMMEDIATELY PRECEDING THE SECOND RECALCULATION.

4 (D) EACH ELIGIBLE PROVIDER IS ENTITLED TO RECEIVE MONTHLY  
5 DISBURSEMENTS FROM THE RESTRUCTURING MECHANISM FOR A PERIOD OF NO  
6 MORE THAN 12 YEARS FROM THE DATE THE RESTRUCTURING MECHANISM IS  
7 ESTABLISHED UNDER SUBSECTION (9), AT WHICH TIME THE RESTRUCTURING  
8 MECHANISM SHALL CEASE TO EXIST.

9 (17) THE MONEY RECEIVED AND ADMINISTERED BY THE COMMISSION FOR  
10 THE SUPPORT AND OPERATION OF THE RESTRUCTURING MECHANISM CREATED BY  
11 THE AMENDATORY ACT THAT CREATED THIS SUBSECTION SHALL NOT BE USED  
12 BY THE COMMISSION OR ANY DEPARTMENT, AGENCY, OR BRANCH OF THE  
13 GOVERNMENT OF THIS STATE FOR ANY OTHER PURPOSE, AND THAT MONEY IS  
14 NOT SUBJECT TO APPROPRIATION, ALLOCATION, ASSIGNMENT, EXPENDITURE,  
15 OR OTHER USE BY ANY DEPARTMENT, AGENCY, OR BRANCH OF THE GOVERNMENT  
16 OF THIS STATE.

17 (18) IF THE FEDERAL GOVERNMENT ADOPTS INTERCARRIER  
18 COMPENSATION REFORMS OR TAKES ANY ACTION THAT CAUSES OR REQUIRES A  
19 SIGNIFICANT CHANGE IN INTERSTATE SWITCHED TOLL ACCESS SERVICE  
20 RATES, THE COMMISSION MAY INITIATE, OR ANY INTERESTED PARTY MAY  
21 FILE AN APPLICATION FOR, A PROCEEDING PURSUANT TO SECTION 203  
22 WITHIN 60 DAYS OF THAT ACTION TO DETERMINE WHETHER ANY  
23 MODIFICATIONS TO THE SIZE, OPERATION, OR COMPOSITION OF THE  
24 RESTRUCTURING MECHANISM ARE WARRANTED. DURING THE PENDENCY OF THAT  
25 PROCEEDING, THE REQUIREMENT IN SUBSECTION (2) FOR ELIGIBLE  
26 PROVIDERS TO SET INTRASTATE SWITCHED TOLL ACCESS SERVICE RATES  
27 EQUAL TO INTERSTATE SWITCHED TOLL ACCESS SERVICE SHALL BE

1 TEMPORARILY SUSPENDED BY THOSE PROVIDERS. INTRASTATE ACCESS RATES  
2 MAY NOT BE INCREASED ABOVE THE LEVELS THAT EXIST AT THE TIME OF THE  
3 SUSPENSION. FOLLOWING NOTICE AND HEARING, UPON A SHOWING OF GOOD  
4 CAUSE, THE COMMISSION MAY STOP OR PLACE CERTAIN CONDITIONS ON THE  
5 TEMPORARY SUSPENSION.

6 (19) IF THE FEDERAL GOVERNMENT CHANGES THE FEDERAL UNIVERSAL  
7 SERVICE CONTRIBUTION METHODOLOGY SO THAT IT IS NOT BASED ON A  
8 PERCENTAGE OF TOTAL INTERSTATE TELECOMMUNICATIONS SERVICES  
9 REVENUES, THE COMMISSION SHALL MODIFY THE CONTRIBUTION METHODOLOGY  
10 FOR THE RESTRUCTURING MECHANISM TO BE CONSISTENT WITH THE FEDERAL  
11 METHODOLOGY. THE COMMISSION SHALL INITIATE A PROCEEDING TO MODIFY  
12 THE CONTRIBUTION METHODOLOGY FOR THE RESTRUCTURING MECHANISM AND TO  
13 ESTABLISH A REASONABLE TIME PERIOD FOR TRANSITION TO THE NEW  
14 CONTRIBUTION METHODOLOGY.

15 (20) DISPUTES ARISING UNDER THIS SECTION MAY BE SUBMITTED TO  
16 THE COMMISSION FOR RESOLUTION PURSUANT TO SECTIONS 203 AND 204.

17 (21) IF ANY CONTRIBUTING PROVIDER SUBJECT TO THIS SECTION  
18 FAILS TO MAKE THE REQUIRED CONTRIBUTIONS OR FAILS TO PROVIDE  
19 REQUIRED INFORMATION TO THE COMMISSION, THE COMMISSION SHALL  
20 INITIATE AN ENFORCEMENT PROCEEDING UNDER SECTION 203. IF THE  
21 COMMISSION FINDS THAT A CONTRIBUTING PROVIDER HAS FAILED TO MAKE  
22 CONTRIBUTIONS OR TO PERFORM ANY ACT REQUIRED UNDER THIS SECTION, A  
23 CONTRIBUTING PROVIDER SHALL BE SUBJECT TO THE REMEDIES AND  
24 PENALTIES UNDER SECTION 601.

25 (22) ELIGIBLE PROVIDERS AND CONTRIBUTING PROVIDERS SHALL  
26 PROVIDE INFORMATION TO THE COMMISSION THAT IS REQUIRED FOR THE  
27 ADMINISTRATION OF THE RESTRUCTURING MECHANISM. COMPANY-SPECIFIC

1 INFORMATION PERTAINING TO ACCESS LINES, SWITCHED TOLL ACCESS  
2 SERVICES MINUTES OF USE, SWITCHED TOLL ACCESS DEMAND QUANTITIES,  
3 CONTRIBUTIONS, AND INTRASTATE TELECOMMUNICATIONS SERVICES REVENUES  
4 SUBMITTED TO THE COMMISSION UNDER THIS SUBSECTION IS CONFIDENTIAL  
5 COMMERCIAL OR FINANCIAL INFORMATION AND EXEMPT FROM PUBLIC  
6 DISCLOSURE PURSUANT TO SECTION 210.

7 (23) AS USED IN THIS SECTION:

8 (A) "COMMERCIAL MOBILE SERVICE" MEANS THAT TERM AS DEFINED IN  
9 SECTION 332(D) (1) OF THE TELECOMMUNICATIONS ACT OF 1996, 47 USC  
10 332.

11 (B) "CONTRIBUTING PROVIDER" MEANS AN ENTITY REQUIRED TO PAY  
12 INTO THE RESTRUCTURING MECHANISM.

13 (C) "ELIGIBLE PROVIDER" MEANS AN INCUMBENT LOCAL EXCHANGE  
14 CARRIER AS DEFINED IN SECTION 251 OF THE TELECOMMUNICATIONS ACT OF  
15 1996, 47 USC 251, THAT AS OF JANUARY 1, 2009 HAD RATES FOR  
16 INTRASTATE SWITCHED TOLL ACCESS SERVICES HIGHER THAN ITS RATES FOR  
17 THE SAME INTERSTATE SWITCHED TOLL ACCESS SERVICES, AND THAT  
18 PROVIDES THE SERVICES AND FUNCTIONALITIES IDENTIFIED BY RULES OF  
19 THE FEDERAL COMMUNICATIONS COMMISSION DESCRIBED AT 47 CFR  
20 54.101(A).

21 (D) "INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICE"  
22 MEANS THAT TERM AS DEFINED IN 47 CFR 9.3.

23 (E) "RESTRUCTURING MECHANISM" MEANS THE INTRASTATE SWITCHED  
24 TOLL ACCESS RATE RESTRUCTURING MECHANISM ESTABLISHED IN THIS  
25 SECTION.



# Exhibit 3